

REMARKS

Applicant respectfully requests reconsideration. Claims 85-92 were previously pending in this application. No claims have been added, amended or canceled. As a result, claims 85-92 are pending for examination with claims 85-87, 89 and 90 being independent claims. No new matter has been added.

Double Patenting Rejection

The Examiner rejected claims 85-92 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-27 of U.S. Patent No. 7,354,594 ('594).

Without conceding the Examiner's rejection and merely in the interest of expediting prosecution, Applicant is providing herewith a terminal disclaimer over '594.

In addition, Applicant notes for the record that claim 12 of '594, and the claims dependent thereon, do not recite that the modification reduces the AT content of the gene by replacement of the protozoan codons with codons preferred by mammalian cells. Further, Applicant does not concede that claims 6-27 of '594 require that the proteins must be made by the instantly claimed methods.

Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

The Examiner provisionally rejected claims 85-92 on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 27-32, 34-37, 39-58, 60-67, 69-72 and 74 of copending Application No. 10/949,975 ('975).

Applicant does not concede the correctness of the Examiner's rejection or his characterization of the claims. Nevertheless, Applicant notes that '975 is not currently allowed. Therefore, this rejection should be withdrawn, and the instant application should be allowed to proceed to allowance.

In addition, Applicant does not concede that the claims of '975 are species of the instant claims as stated by the Examiner.

Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

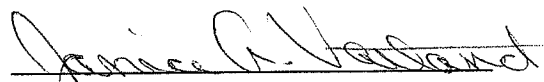
Finally, Applicant does not concede that the Examiner's statements in regard to and characterization of the claims of Application No. 10/082,018 and U.S. Patent No. 6,593,463 are correct.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. G0744.70037US02.

Respectfully submitted,



Janice A. Vatland, Ph.D.
Reg. No. 52,318
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

Date: May 21, 2009
x05.21.09